

De Minimis Settlement Offer

Operating Industries, Inc. Superfund Site

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Agenda

- Site Background/CERCLA
- Potentially Responsible Parties/Manifests/Hazardous Substances
- Current Offer/Form of Agreement/Benefits of Settlement
- Costs/Settlement Amount
- Cleanup Activities
- Challenge Applications/Document Repositories/Signature Page Due Dates/Contact Information
- Questions & Answers

Operating Industries, Inc. (OII) Superfund Site De Minimis Settlement Offer

Site Background/CERCLA

Site Background

Location:

- Site located in City of Monterey Park with City of Montebello along southern boundary
- Pomona Freeway (Highway 60) divides site into two distinct parcels:
 - North Parcel – 45 acres
 - South Parcel – 145 acres
- Site surrounded by homes, shopping areas, commercial buildings

OII Landfill



Site Background

- Operational Period:
From 1948 to 1984
- Types of Wastes:
Municipal Solid Waste: ~ 38 million cubic yards
Liquid Industrial Waste: > 300 million gallons
- Landfill Mass (South Parcel):
275 feet high
Steep side slopes
- Placed on EPA's National Priorities List (NPL) in June 1986

Liable Parties Under CERCLA

Per CERCLA § 107(a), 42 U.S.C. § 9607(a):

1. Current owners/operators
2. Owners/operators at time of disposal
3. Generators or arrangers for disposal of hazardous substances
4. Transporters

Liability Scheme

- Joint and Several
- Retroactive
- Strict

Historical Enforcement Activities

- **Nine Consent Decrees (CDs)**

(Three primary work settlements **CD-1, CD-3, CD-8**)

- Work Defendants agreed to fund and perform work
- Other generators participated by paying cash based on their volumetric share
- Non-generators settled in CD-4 (municipalities and transporters)

Historical Enforcement Activities (cont.)

- **Two Unilateral Administrative Orders (UAOs)**
 - For remedial activities by recalcitrant majors
- **Seven Administrative Orders on Consent**
 - First AOC issued in 1998; last issued in 2002
 - 450 parties settled in first *de minimis* settlement

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Potentially Responsible Parties/Manifests/Hazardous Substances

Categories of "Generators" at OII

4,000 Potentially Responsible Parties (PRPs)

<u>Type of PRP</u>	<u>Parties</u>
Major & High Volume <i>De Minimis</i>	350
Low Volume <i>De Minimis</i>	1,350
<i>De Micromis & Small Volume De Minimis</i>	1,650
Non-Viable (insolvent or bankrupt)	650

Manifests

100,000 Waste Manifests

<u>Category</u>	<u>Volume (gallons)</u>
Major Contributors	> 5 Million
High Volume <i>De Minimis</i>	$\geq 110,000$
Low Volume <i>De Minimis</i>	$\geq 4,200$
Small Volume <i>De Minimis</i>	$> 2,100$
<i>De Micromis</i>	$\leq 2,100$

Manifests to Identify PRPs

- EPA views your company as a generator because it, or one of its predecessors, is identified on one or more **manifests**
- Copies of your company's **manifests** were provided in the offer

Hazardous Substances vs. Waste

- Manifested waste sent to OII contained hazardous substances as defined under CERCLA
- Examples of CERCLA hazardous substances:
 - bleach
 - lubricating agents
 - pesticides
 - dry cleaning chemicals
 - solvents
 - metals
 - used oil
- “Mud and Water” was used on manifests to describe the appearance of waste

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Current Offer/Form of Agreement/Benefits of Settlement

Current De Minimis Settlement Offer

- Sent to 650 *de minimis* parties
- Based on volumetric share
- Follow-on to prior OII *de minimis* settlements
- Opportunity to resolve Site-wide liability with:
 - Contribution Protection
 - Covenant Not to Sue

Form of De Minimis Settlement Agreement

- Agreement between your company & EPA
- Language not negotiable
- 30-Day Comment Period after EPA signs
- EPA notifies you after close of Comment Period
- Payment due 30 days after EPA notifies you

Benefits of Settlement

- *De Minimis* party receives:
 - Covenant Not to Sue - - EPA promises not to sue you for work or money at OII Site
 - Contribution Protection - - CERCLA provides you with protection from lawsuits from other parties seeking contribution

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Costs/Settlement Amount

Response Costs

Past and Future Costs for:

- Site Investigation
- Remedy Selection
- Design and Construction
- Operation & Maintenance
- Monitoring
- Agency Oversight

Base Settlement Amount

	Cost (millions)	\$ per gallon*
Past Costs	\$406	\$1.54
Future Costs	300	1.14
Total Site Costs	706	2.68
Offset**	(72)	(0.27)
Base Settlement Amount***		2.40

Multiply Manifested Volume By \$2.40 = Base Settlement Amount

*Based on 264.7 million gallons

**Recoveries from liability not associated with manifested waste (i.e., municipalities and transporters)

*** Rounded-off

Premiums

Why a Premium?

- Accounts for uncertainties in future response costs

Premium amounts are specific to both the site and settlement and typically range from 50% – 100% of future costs

Why a Premium at OII?

- OII is a complex site with a long-term remedy
 - very steep side slopes
 - surrounded by residential areas
 - in earthquake zone

Settlement Amount Per Gallon

Tier I – 100% Premium

Base	\$ 2.40 per gallon
Premium	<u>1.14</u>
	\$ 3.53*

- With standard *de minimis* covenant for known and unknown conditions

Tier II – 70% Premium

Base	\$ 2.40 per gallon
Premium	<u>0.79</u>
	\$ 3.19

- Reopeners for unknown conditions

*Rounded-off

Operating Industries, Inc. (OII) Superfund Site

Cleanup Activities

Aerial Photo of Oil Landfill Superfund Site



Uncontrolled Landfill Leachate



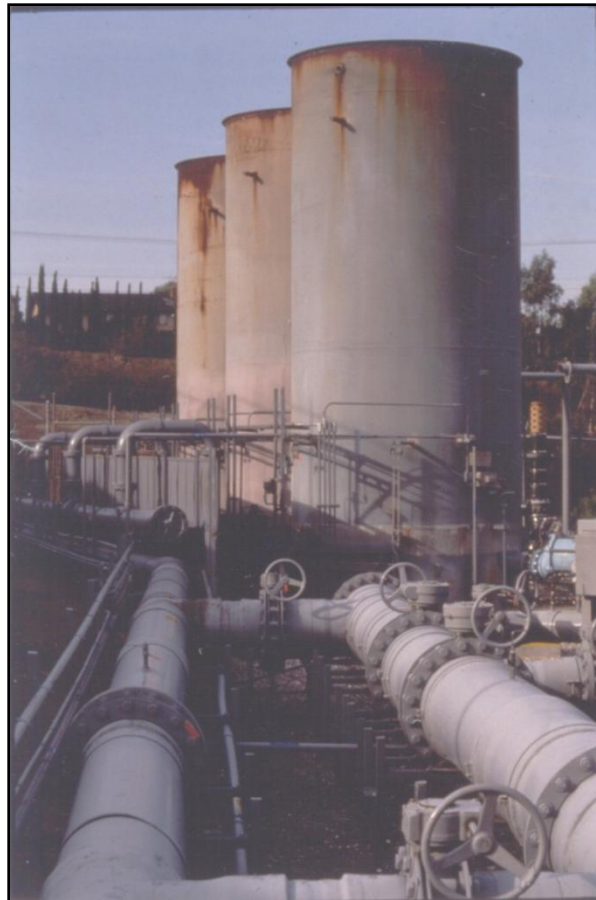
Landfill Gas Found in Nearby Homes



Unstable Landfill with Inadequate Cover



Old Landfill Gas Flares



Cleanup Remedies at OII

Four Records Of Decision (RODs)

- A ROD selects the cleanup alternative(s) to be used
- First ROD signed in 1987; fourth signed in 1996

Remedies include:

- Leachate Collection & Treatment System
- Landfill Gas Collection & Treatment System
- Reconstruction of Toe Buttress to protect residences
- Final Covers (South and North Parcels)
- Perimeter Liquids Control System

Landfill Gas Collection Wells & Pipelines



Leachate & Landfill Gas Treatment Systems



Leachate Treatment Plant



South Parcel - New Toe Buttress Along Backyards



South Parcel Cover - Steep Slope Construction



South Parcel - Cover Construction



Completed Landfill Cover on South Parcel



Completed Landfill Cover on North Parcel



Remaining Cleanup Actions

- Complete final portion of Perimeter Liquids Control System and related groundwater remedy components
- Upgrade Leachate Treatment Plant
- Upgrade and replace treatment facilities after design service life
- Long-term groundwater monitoring
- Long-term site operation and maintenance
- Five-year reviews

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**Challenge Applications/Document Repositories/Signature
Page Due Dates/Contact Information**

Applications Due May 7, 2010

Ability to Pay (ATP)

- CERCLA § 122(g)(7) “Ability to Pay” settlements
- Demonstrate an “inability or limited ability” to pay
- EPA determines amount party is able to pay while maintaining “basic business operations”
- To apply, return Ability to Pay application to EPA by May 7, 2010

Volume Review

- Data Input Error
- Generator Identification Error
- Disposal Facility Error
- Duplicate Manifest Error

Document Repositories

Superfund Records Center (Complete Site File)

95 Hawthorne Street, 4th Floor
San Francisco, CA 94105
(415) 536-2000

Monterey Park Bruggemeyer Library

(Administrative Record)

318 South Ramona Ave.
Monterey Park, CA 91754
(626) 307-1366

Montebello Regional Library (Limited Documents)

1550 West Beverly Boulevard
Montebello, CA 90640
(323) 722-6551

Signature Page Due May 7, 2010

- Signature Page to EPA May 7, 2010
- Signature Page with Volume Challenge May 7, 2010
- Signature Page with Ability to Pay Application May 7, 2010

EPA Contact Information

- **OII Site Web Page**
<http://www.epa.gov/region09/operatingindustries>
- **Telephone Information Line (9:00 AM – 5:00 PM PST)**
(800) 394-0495
- **E-Mail Address**
OII_De_Minimis@epa.gov
- **Question & Answer Follow-up Meeting**
Westin LAX, ORLY Room, 9-11 AM, April 23, 2010

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Questions & Answers